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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/955,894      | 09/19/2001  | Deborah Marie Cocco  | Z6000(V)            | 9842             |

201 7590 03/02/2005

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| EXAMINER |
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SHAPIRO, JEFFERY A

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| ART UNIT | PAPER NUMBER |
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3653

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/955,894

Applicant(s)

COCCARO ET AL.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6 and 8-13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,578,763) in view of Maniwa et al (JP 11185164A). Brown discloses the following method for purchasing a consumer product.

As described in Claim 1;

- a. selling a consumer product (detergent) in a package (a bottle/container) to a consumer at a point of purchase establishment;
- b. instructing the consumer to retain the package after the consumer product has been consumed;
- c. providing a means for the customer to have the package refilled with consumer product;

(See col. 1, lines 10-40.)

As described in Claims 2, 3, 9 and 12;

- d. the product is a liquid detergent (see abstract and figure 1);

As described in Claim 4;

- e. the point of purchase establishment is a mini-mart, department store, drug store or supermarket (see col. 1, lines 10-12);

As describe in Claim 5;

- f. the package is a bottle (see col. 1, lines 13 and 14);

As described in Claims 6 and 8;

- g. the bottle contains liquid detergent (see col. 1, lines 12 and 14);

As described in Claim 10;

- h. the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device (see col. 3, lines 43-52;)

Brown further discloses the following.

(Note that the method of Brown discloses a customer buying an original container with detergent at an original price, then discounting subsequent refills at a price that reflects a certain discount based upon the lack of requirement for a container. Applicant's formula discloses prepaying for a set number of refills, where the original purchase price for the refillable container is discounted for the container originally bought, but no longer required for subsequent refills. See col. 2, lines 4-25 of Brown, noting that one refill is included in the sale price of the system of Brown. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed.)

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Brown does not expressly disclose, but Maniwa discloses the following.

As described in Claim 1;

- i. *wherein the product is sold at a sale price that includes a predetermined number of refills;*

As described in Claim 11;

- j. the method satisfies the formula  $P_0 < P_T + (P_R)N'$

Where  $P_0 = P_T + (P_R)N$

$P_0$  = original purchase price of a consumer product

$P_T$  = typical purchase price of a consumer product

$P_R$  = refill price

$N$  = a defined number of refills

$N'$  = a defined number of purchases

$N=N'$

(Maniwa, abstract, describes a point-of-sale terminal with means to set a refill of a refillable product for set time bands, including the refill number.)

Both Brown and Maniwa are considered to be analogous art because Brown discloses repeatedly filling a bottle with detergent, each refill being at a set price and Maniwa describes prepaying for a set amount of "refills" for a set unit of time of a product.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have prepaid for a set number of refills.

The suggestion/motivation would have been to allow for a more efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled.

See abstract of Maniwa.

Note also that Maniwa's teaching suggests that a specified number of refills are prepaid, because it mentions buying a finite number of refills for a particular time band.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Maniwa, and further in view of Duvall (US 5,522,428). Brown discloses the method as described above. Brown further discloses refilling a container/bottle a number of times. See, for example, col. 2, lines 4-25. Brown does not expressly disclose, but Duvall discloses the following.

As described in Claim 7;

- k. the package is refilled a predetermined number of times, the predetermined number being less than a number of times that causes stress fractures in the package;

(Note that Duvall discloses in col. 1, lines 50-65, that cyclic filling and refilling of a container subjects said container to cyclic fatigue, noting also in line 52-54, that such a cyclic filling and refilling under pressure is life limiting to the container.

Both Brown and Duvall are considered to be analogous art because Brown discloses repeatedly filling a bottle at pressure and Duvall speaks to a cyclic fatigue life of such bottles.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have limited the number of refills based on the fatigue cycle life of the bottle under repeated pressurized fillings.

The suggestion/motivation would have been to prevent possibly dangerous or unwanted bursting of the container used for repeated fillings of detergent.

4. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,578,763) in view of Rosenblum (US 6,766,218 B2). Brown discloses the following method for purchasing a consumer product.

As described in Claim 1;

- a. selling a consumer product (detergent) in a package (a bottle/container) to a consumer at a point of purchase establishment;
- b. instructing the consumer to retain the package after the consumer product has been consumed;
- c. providing a means for the customer to have the package refilled with consumer product;

(See col. 1, lines 10-40.)

As described in Claims 2, 3, 9 and 12;

d. the product is a liquid detergent (see abstract and figure 1);

As described in Claim 4;

e. the point of purchase establishment is a mini-mart, department store, drug store or supermarket (see col. 1, lines 10-12);

As describe in Claim 5;

f. the package is a bottle (see col. 1, lines 13 and 14);

As described in Claims 6 and 8;

g. the bottle contains liquid detergent (see col. 1, lines 12 and 14);

As described in Claim 10;

h. the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device (see col. 3, lines 43-52;)

Brown further discloses the following.

(Note that the method of Brown discloses a customer buying an original container with detergent at an original price, then discounting subsequent refills at a price that reflects a certain discount based upon the lack of requirement for a container. Applicant's formula discloses prepaying for a set number of refills, where the original purchase price for the refillable container is discounted for the container originally bought, but no longer required for subsequent refills. See col. 2, lines 4-25 of Brown, noting that one refill is included in the sale price of the system of Brown. This refill is



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signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed.)

Brown does not expressly disclose, but Rosenblum discloses the following.

As described in Claim 1;

- i. *wherein the product is sold at a sale price that includes a predetermined number of refills;*

As described in Claim 11;

- j. the method satisfies the formula  $P_0 < P_T + (P_T)N'$

Where  $P_0 = P_T + (P_R)N$

$P_0$  = original purchase price of a consumer product

$P_T$  = typical purchase price of a consumer product

$P_R$  = refill price

$N$  = a defined number of refills

$N'$  = a defined number of purchases

$N=N'$

(Rosenblum at col. 3, lines 8-27, describes a point-of-sale terminal with an automatic prescription dispensing system that allows patient requests for automatic refills and acceptance of credit, debit, smart and ATM cards or cash.

Both Brown and Rosenblum are considered to be analogous art because Brown discloses repeatedly filling a bottle with detergent, each refill being at a set price and

Rosenblum describes prepaying for a set amount of "refills" for a set unit of time of a product.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have prepaid for a set number of refills.

The suggestion/motivation would have been to allow for a more efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled.

See Rosenblum, col. 3, lines 8-11.

Note also that Rosenblum describes a patient requesting automatic refill of a prescription drug. One of ordinary skill in the art would have recognized that payment of such refills could easily be paid by the payment means mentioned, such as credit or debit. The number of such refills included would have been a matter of design choice based upon the requirements of the prescription. For example, if a patient takes lisinopril, a blood pressure medication, on a regular basis of once a day, it would have been obvious to pay for several refills of say 30 such pills at a time to cover a monthly refill, therefore buying a year's worth of refills. Additionally, official notice is taken that buying such refills in advance provides for reduction of price for buying in bulk.

### ***Response to Arguments***

5. Applicant's arguments filed 1/31/05 have been fully considered but they are not persuasive. Regarding Applicant's added claim language in Claim 1, "*wherein the product is sold at a sale price that includes a predetermined number of refills;*"

Again, the system of Brown issues a coupon for each refill. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed

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each time a refill is performed. Maniwa discloses prepaying for a certain number of refills, as described above.

Brown discloses coupons for each refill subsequent to the original purchase, which includes the container. It would have been obvious to one ordinarily skilled in the art to have incorporated a "prepaid system" such as suggested by Maniwa so as to prepay for such refills, signified by the coupons, in Brown's system. Maniwa specifically states

"[a] POS terminal (1) executes the sales registration of the merchandise by an input operation accompanying merchandise sales and is provided with a means for setting the merchandise capable of the refill as refill specified merchandise, the means for registering the sales number of actually selling the refill specified merchandise and the refill number of refilling it for respective time bands and the means for outputting the sales number, the refill number and the service rate of the merchandise based on them for the respective time bands."

In other words, merchandise, such as Brown's detergent, which is prepaid by coupons, appears to lend itself directly to Maniwa's scheme of prepaying for a set number of refills for a respective time band. Therefore, it would have been obvious to apply the teaching/suggestion of Maniwa to the system of Brown. See also other prior art "prepaid" systems below.

Applicant asserts that Duvall does not provide a teaching regarding a set number of refills for a particular container for said detergent/liquid, based on a certain number of refills/pressurizations before container failure. Note that pressurizations of a container

are considered, at the very least, to be a more severe failure requirement, but that the same considerations are present as in Applicant's system. These considerations are that the repeated refilling of a single container results in flexure of the sides of the container. Such flexure is due to force from something. This force appears to be from the liquid itself, if not the liquid along with an entraining gas, such as air. Such a force is considered to be in the form of "pressure" on the sides of the container. Even if it is argued that Applicant's system does not fill the container using pressurized liquid, the fact that Duvall concerns the repeated flexure of the sides of a container is considered to be analogous to Applicant's system because Brown's system encompasses repeated fillings which could cause failure of the container after a certain number of fillings. Therefore, Duvall is considered to apply to Applicant's system, as described above.

Regarding Brown combined with Rosenblum, note that Brown provides the teaching for selling detergent with refills signified by coupons. Rosenblum simply discloses automatic refills and refill reminders for containers that are refilled, of which Brown's detergent container can be construed. One ordinarily skilled in the art would have been led to use Rosenblum's scheme for automatic refill requests and refill reminders that would replace the coupons in Brown's system. Therefore, Rosenblum and Brown is considered to read on Applicant's claims as well.

### ***Conclusion***

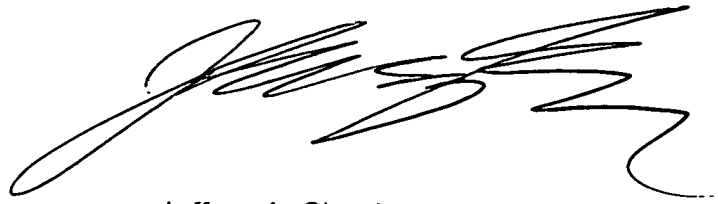
**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro  
Examiner  
Art Unit 3653

February 27, 2005



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SUPERVISORY PATENT EXAMINER  
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